IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5910 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M S KADRI

Versus

STATE OF GUJARAT

Appearance:

MR SHALIN N MEHTA FOR MR GIRISH PATEL for Petitioner

MR MA BUKHARI AGP FOR M/S PATEL ADVOCATES for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/08/2000

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution of India the petitioner challenges (i) the order dated March 11, 1989, Annexure 'D', recorded in departmental proceedings by Conservator of Forest, Surat,

by which the petitioner was held guilty of the charge levelled against him and imposed punishment of placing him in the minimum pay scale of Rs.1200 for a period of three years with cumulative effect and also treating the period of suspension as suspension and (ii) the order dated January 24, 1990, Annexure 'G', passed in appellate proceedings by the appellate authority i.e., the Principal Chief Conservator of Forest, Vadodara, by which the appeal filed by the petitioner came to be dismissed.

2. The petitioner joined the service as a Beat-Guard on December 3, 1959. Thereafter he was directly recruited to the post of Forester with effect from June 6, 1974 and posted as Round Forester, Zakhari. According to the petitioner, during his service career as a Forester, he has discharged his services sincerely, honestly and diligently and he has registered so many offences relating to illicit cutting of trees.

3. While the petitioner was serving at Antapur, he was suspended vide office order dated October 3, 1986 on the allegation that he was negligent in discharging his duties as Forester and pursuant to the same he was charge-sheeted vide order dated January 8, 1987. The petitioner replied to the said charge-sheet on May 14, 1987. On conclusion of the inquiry, the inquiry officer found the petitioner not guilty to the charge levelled against him and exonerated him vide order dated November 19, 1988. However, the petitioner was served with the order dated March 11, 1989 passed by the Conservator of Forest, Surat, imposing upon him the punishment of placing him in the minimum pay scale of Rs.1200/- for a period of three years with cumulative effect and also treating the period of suspension as suspension without issuing show cause notice as well as without supplying the report of the inquiry officer by which the petitioner was exonerated.

4. Aggrieved thereby the petitioner preferred appeal before the Principal Chief Conservator of Forest, Vadodara on May 15, 1989 which, according to him, was not decided for a pretty long period. Thereafter the said appeal was dismissed by the appellate authority vide order dated January 24, 1990.

5. Aggrieved by the order dismissing the appeal and confirming the punishment inflicted upon the petitioner by the disciplinary authority, the petitioner challenges the same by filing this petition under Article 226 of the Constitution.

6. According to the petitioner, he was not at all involved in the illicit cutting of trees nor was negligent in discharging his duties. Moreover, so-called alleged incidents were not at all connected with him. On the contrary, even during this period he had caught many illicit cutters and seized hundreds of cubic metres of timber. It is further contended by the petitioner that the inquiry officer was convinced about his innocence and, therefore, he recorded the finding in his favour and there was no reason for the disciplinary authority to disagree with the said finding of the inquiry officer. Besides this, if the disciplinary authority wanted to disagree with the finding of the inquiry officer it was obligatory on the part of the disciplinary authority to give an opportunity of hearing to the petitioner before reversing the finding recorded by the inquiry officer. However, the disciplinary authority had not given any notice, nor any opportunity of hearing was given to the petitioner and the petitioner was not even heard on the quantum of punishment. Therefore, the finding recorded by the disciplinary authority imposing the punishment is capricious, illegal, null and void and also violative of Article 14 of the Constitution of India. In sum and substance, the petitioner pleaded his innocence and reiterated that he was discharging his duties very carefully, honestly and sincerely. The petitioner, therefore, filed the petition challenging the orders at Annexures 'D' and 'G' to which reference is made earlier.

7. The respondents appeared through M/s. Patel Advocates, Solicitors. However, they have chosen not to file reply affidavit but contested the petition by making oral submissions.

8. I have heard Mr. Shalin Mehta, learned advocate for the petitioner and Mr. M.A. Bukhari, learned AGP for the respondents.

9. The pith and substance of the submissions of Mr. Shalin Mehta centers round that the petitioner was serving honestly, sincerely and faithfully and there was no complaint against him and he was falsely involved and charge-sheeted for so-called negligence in the discharge of his duties. It was contended by the learned advocate that in fact there was no negligence on the part of the petitioner and he was rightly exonerated by the inquiry officer. However, the disciplinary authority without issuing show cause notice, without hearing him and even without supplying copy of the report of the inquiry officer, imposed a very harsh penalty on him by placing

him in the minimum pay scale of Ra.1200 for a period of three years with cumulative effect and also treating the period of suspension as suspension and the appellate authority without considering all the aforesaid aspects, dismissed the appeal. Learned advocate for the petitioner, therefore, contended that both the orders are against the principles of natural justice, arbitrary, capricious, illegal, null and void so also violative of Article 14 of the Constitution of India and urged that the petition be allowed by setting aside both the orders which are impugned in this petition.

10. Mr. Bukhari, learned A.G.P. supported the order passed by the disciplinary authority and the appellate authority throughout and contended that disciplinary authority being the appointing authority, the final decision rests with it and it can come to its own conclusion bearing in mind the view expressed by the inquiry officer and there is no scope for judicial review in a petition under Article 226 of the Constitution of India. It was also contended by the learned A.G.P. that the charge levelled against the petitioner is proved and, therefore, the disciplinary authority has recorded the finding of guilt against the petitioner and imposed punishment which can be said to be lenient as compared to the charge levelled and proved against the petitioner. He further contended that on the contrary the penalty imposed is disproportionate to the guilt and leniency was shown towards him and, therefore, the disciplinary authority has imposed punishment of placing the petitioner in the minimum pay scale of Rs.1200 instead of removing him from service. He, therefore, urged that the petition may be dismissed with costs.

11. So far as the factual aspects and the averments made in the petition are concerned, there is no dispute at all. There is also no dispute that the petitioner was charge-sheeted and inquiry was held against him and the inquiry officer found him not guilty to the charge and exonerated him while the disciplinary authority disagreed with the finding of the inquiry officer and imposed punishment upon the petitioner to which reference is made in earlier paragraphs of this judgment. There is also no dispute that the report of the inquiry officer was not supplied to the petitioner nor he was heard by the disciplinary authority before taking tentative decision and finding him guilty as well as imposing the punishment upon him and straightway order of punishment was passed by the disciplinary authority.

12. Now the only question which requires to be

considered by this Court is as to what is the scope of judicial review in a departmental inquiry while exercising powers in a petition filed under Article 226 of the Constitution of India by the High Court. In this connection it would be appropriate to refer to the case of Kuldeep Singh v. Commissioner of Police, (1999) 2 SCC 10, wherein the Supreme Court while laying down lucid principle relating to the scope of judicial review in departmental inquiry made following weighty observations which read thus:

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were adverse or made at the dictates of the superior authority.

7. In Nand Kishore Prasad v. State of Bihar AIR 1978 SC 1277 it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterized as perverse if it is

shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in State of A.P. v. Rama Rao, AIR 1963 SC 1723, in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in Central Bank of India Limited v. Prakash Chand Jain, AIR 1969 SC 983 and Bharat Iron Works v. Bhagubhai Balubhai Patel, AIR 1976 SC 98. In Rajinder Kumar Kindra v. Delhi Admn. AIR 1984 SC 1805 it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

13. In view of the aforesaid principles laid down by the Supreme Court it cannot be gainsaid that jurisdictional sweep of the High Court in a petition relating to departmental inquiry and to examine the scope of judicial review filed under Article 226 of the Constitution of India is not totally barred. As per the aforesaid decision, four exceptions are carved out and if

the case of the petitioner falls in any one of the exceptions then the High Court can examine by way of judicial review and decide the case of the petitioner/ delinquent by passing appropriate order.

14. Now the question falls for determination in this petition is as to whether the order recorded by the disciplinary authority holding the petitioner guilty to the charge levelled against him, contrary to the finding recorded by the inquiry officer, without giving opportunity of hearing to the petitioner by issuing show cause notice asking him to prove his innocence and straightway imposing the penalty upon the petitioner can be said to be legal and valid and thereby has the disciplinary authority not violated the principles of natural justice?

15. In this connection, it may be appreciated that law on the service jurisprudence with regard to issuance of show cause notice by disciplinary authority while differing with the report of inquiry officer is concerned, it goes on changing from time to time. Now the law on this point is settled by the Supreme Court in the case of Yoginath D. Bagde v. State of Maharashtra, (1999) 7 SCC 739, wherein the Supreme Court has clearly and categorically observed that requirement of affording opportunity of hearing as laid down by the Supreme Court in the judgment rendered in the case of Punjab National Bank v. Kunj Behari Misra, (1998) 7 SCC 84, being in consonance with Article 311 (2) and being a constitutional right to be heard, has to be read into a rule which does not make specific provision to this effect and the disciplinary authority before forming its final opinion, has to convey to charged employee its tentative reasons for disagreeing with the findings of the enquiry officer and to issue show cause notice. In paragraph 31 of the said judgment the Supreme Court has made following weighty observations which read as under:

> "31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the

> more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311 (2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

16. In view of the aforesaid clear pronouncement of the Supreme Court and on the facts and in the circumstances emerging from the record of the case at the risk of repetition, I may state that the disciplinary authority while recording the reasons by which it disagreed with the finding arrived at by the inquiry officer and reversed the finding, did not issue show cause notice to the petitioner nor supplied the report of the inquiry officer and the petitioner was not heard even on the quantum of punishment and by order dated March 11, 1989 straightaway punishment was imposed upon him by observing that the charge levelled against the petitioner was proved. Therefore, obviously the opportunity to defend was not given to the petitioner.

17. Seen in the above context, the finding arrived at by the disciplinary authority requires to be set aside by declaring it illegal, null and void. Obviously,

therefore, the order recorded by the appellate authority is also liable to be set aside by declaring it as illegal, null and void. Resultantly, both the orders are liable to be struck down by quashing and setting them aside and accordingly they are quashed and set aside.

18. For the foregoing reasons, the petition succeeds and accordingly it is allowed. Rule is made absolute with no order as to costs.

4.8.2000. (A.M. Kapadia, J.)

(karan)